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10/022,658	12/17/2001	Neil Brendon O'Leary	93214.034	1777

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EXAMINER

KWON, MICHAEL J

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 10/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/022,658

Applicant(s)

O'LEARY ET AL.

Examiner

Michael J. Kwon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 March 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Drawings*

The drawings are objected to under 37 CFR 1.83(a) because they fail to show the following, as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).

- Page 4, line 32 sets forth that lever 32 is attached near one end of shaft 41, but this is not shown in the drawings, and it is unclear as to which end the lever 32 is attached.
- Page 5, lines 5-6 sets forth that adjustable stop 47 is attached to plate 21 above tab 45, but Fig 4 shows that stop 47 and tab 45 are one and the same, and how is 47 attached to plate 21? This is not shown by the drawings.
- Page 5, line 9 sets forth that tab 45 engages adjustable stop 46, but reference number 46 is return spring 46, and adjustable stop is 47. Did the applicant mistype the reference numbers? Further, it is difficult to ascertain how tab 45 engages adjustable stop (whichever number it may be with the amendment) when they are one and the same according to the drawings, particularly Fig. 4.
- Page 5, line 16 sets forth that mechanical stops 48 and 49 prevent spring 24 from being unduly compressed, but according to the drawings, mechanical stops 48 and 49 are positioned parallel to the spring 24, so how can these items prevent spring 24 from being unduly compressed?
- Page 6, line 25 state that feet prevent the scooter from rolling about longitudinal axis 81, but according to Fig. 7, the pivot axis is about the center point of the bar 54 and steel tube 51.

The drawings are further objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "46" has been used to designate both return spring and adjustable stop; and reference character "25" has been used to designate both spring and beam.

The drawings are further objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the post adapted to be attached to a vehicle must be shown; and further, the means for detecting a decrease in the separation of the first plate from the second plate must be shown, or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objections to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112, 1<sup>st</sup> Paragraph***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 1, 6, and 9 sets forth the limitation, "post adapted to be attached to a vehicle" which lacks support in the specification with enough specificity to illustrate how the post is adapted to be attached to a vehicle.

Regarding claim 1, the specification does not provide an enabling disclosure of the structure needed to illustrate how the load sensor 19 can be a sensor. According to the specification, the load sensor is a spring 24, and a spring does not sense.

Regarding claim 4, the specification does not provide an enabling disclosure of the following structure: Ramp on said post for supporting said platform while said platform is raised or lowered. The post as it is set forth does not appear in the drawings, hence it is difficult to ascertain its limitations.

Regarding claim 6, the specification does not provide an enabling disclosure of the structure needed to illustrate the means for detecting a decrease in the separation of the first plate from the second plate. The disclosure provides not support for the claimed limitation.

Regarding claim 7, the specification does not provide an enabling disclosure of the structure needed to illustrate how an adjustable stop 48 or 49 can be adjustable, and stop the items, which it stops.

Further in regards to claim 7, the set forth limitation, "said first plate moves toward said second plate" is wrong because according to the disclosure, it is the second plate 22 which moves towards the first plate 21.

***Claim Rejections - 35 USC § 112, 2<sup>nd</sup> Paragraph***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 6 and 9, the limitation “an external lift for a scooter” is unclear because the phrase does not specify whether the scooter is being lifted, or the external lift is an auxiliary for the scooter.

Regarding claims 6 and 9, the applicant sets forth two posts: a post and a sliding post. It is confusing as to ascertain exactly which post is attributed the subsequent claimed limitations, as the two posts appear to be substantially different items.

Regarding claim 7, line 2, how can it be that a shaft 41 be rotatably mounted on the second plate 22, when Fig. 4 clearly shows that there is no mechanical relationship between these two features.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Ross.

Regarding claims 1, Ross discloses an external lift for a scooter wherein the lift includes:

- A post 28 adapted to be attached to a vehicle;
- Rotating platform 12 coupled to the sliding post by a hinge 118 including a bar attached to the platform inside a horizontal tube 49 coupled to the post;
- Load sensor 116 actuated by rotation of the platform 12;

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ross in view of Wright.

Regarding claims 2-3 and 9, Ross discloses an external lift for a scooter wherein the lift includes: Lift mechanism including a tube 40 attached to the post; sliding post fitting 42 within the tube 40; rotating platform 12 coupled to the sliding post 42 by a hinge (Fig. 4) including a bar attached to the platform inside a horizontal tube coupled to the post. Ross differs from the claimed invention because he does not show a bore in the bar and a pin attached to the post, wherein the pin engages the bore when the platform is in a raised position to prevent rotation of the platform. Wright discloses a platform from an analogous art, with a pin 66 to prevent the rotation of the platform about the pivot axis. Wright is evidence that ordinary workers in the art of locking swinging arms would recognize the benefit of using a pin for the purpose of locking

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the swinging arm fast. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the bore in the bar of Ross such that a pin is attached to the post, wherein the pin engages the bore when the platform is in a raised position to prevent rotation of the platform, as per the teachings of Wright, so that the platform stays up when in a raised position.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ross in view of Peterson.

Regarding claim 4, Ross discloses a lift, but does not show a roller coupled to the platform and engaging a ramp on the post for supporting the platform while the platform is raised or lowered. Peterson shows in Fig. 3A a roller coupled to the platform and engaging a ramp on the post for supporting the platform while the platform is raised or lowered. Peterson is evidence that ordinary workers in the art of platform supports would recognize the benefit of using a roller coupled to the platform and engaging a ramp on the post for supporting the platform while the platform is raised or lowered. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the platform and the post of Ross such that the roller is coupled to the platform and engages a ramp on the post, as per the teaching of Peterson, in order for the platform to be supported, while it is being raised or lowered.

Claims 5-6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ross

Regarding claims 5 and 10, Ross shows a hold down having a foot 154, but Ross does not show two laterally displaced feet. Although Ross does not expressly show two laterally



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displaced feet, it is well known in the art of holding down scooters, that it is advantageous to have two laterally displaced feet or more, when the platform accommodates more than one scooter. It is logical to have a matching foot for each scooter carried on the platform. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to provide for two laterally displaced feet rather than just one, as shown by Ross, when more than one scooters are being carried on the platform.

Regarding claim 6, Ross discloses an external lift for a scooter wherein the lift includes: Sliding post fitting 42 within the tube 40; Rotating platform 12 attached to the post 28; Lift mechanism including a tube 40 attached to the post; First plate 86 coupled to the tube 40; Second plate 80 coupled to the bar. Ross differs from the claimed invention because he does not expressly show a first spring attached to at least the first plate for separating the first plate from the second plate, and he does not show that the platform 12 is supported in horizontal position by the spring. However, it appears that the first spring is not necessary for separating the first plate from the second plate, and since the platform is self-supporting, the first spring is not needed to support the platform in a horizontal position. Moreover, applicant has not disclosed that having the first spring solves any stated problem, or is for any particular purpose, other than to be a spring in-between plates. Further, it appears that not having a spring in-between the first and the second plates would work equally well, since a spring is merely a cushion in-between the plates, and offers substantially less utility than the applicant claims. Accordingly, the first spring attached to at least the first plate for separating the first plate from the second plate, and for supporting the platform 12 in a horizontal position is deemed to be a design consideration, which fails to patentably distinguish over the prior art of record.

Ross also does not disclose a means for detecting a decrease in the separation of the first plate from the second plate. However, the means for detecting a decrease in the separation of the first plate from the second plate is also considered a matter of design choice, which fails to patentably distinguish over the prior art of record. The dynamics of the claimed features are to separate or conjoin the plates depending on the loading state of the scooter, therefore the detection of a decrease in the separation of the first plate from the second plate does not solve any stated problem, or is for any particular purpose.

Claim 7 cannot be meaningfully treated with respect to the prior art because of the insufficiency of the disclosure.

#### *Allowable Subject Matter*

Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: Claim 8 contains allowable subject matter because the prior art of record does not teach or suggest the combination set forth and including: pin attached to the tube and extending downwardly; a hole in the horizontal tube aligned with the pin; and a bore in the bar that aligns with the hole when the platform is raised in a horizontal position; whereby the pin engages the hole and the bore, thereby preventing the bar from rotating. Although Ross as modified by Wright show a use of a pin to fasten and hold fast a swinging platform, the references do not

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teach pin attached to the tube and extending downwardly whereby the pin engages the hole and the bore, thereby preventing the bar from rotating. The usage of a pin itself does not contain allowable subject matter, but it would not have been obvious to one of ordinary skill in the art at the time the invention was made, to use the downwardly extending pin in combination with the rest of the inventions in order to hold fast a swinging platform.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Hutyra reference shows a pivotable scooter platform with two hold-downs. The reference as disclosed by Riekki meets the limitations of the broadly recited claims, such as a lift mechanism including a tube and a sliding post fitting within the tube. Czech, Messenger and Rice references teach vertically traversing platforms that are attachable to vehicles, and pivot about a hinge. The references by Cash and Talbott illustrate that it is well known in the art to use pins inserting into holes in order to secure or fasten disjoining members.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Kwon whose telephone number is 1-703-305-5310. The examiner can normally be reached on Monday - Friday, 8 a.m. - 5:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached on 1-703-308-3248. The fax phone numbers for the organization where this application or proceeding is assigned are 1-703-308-0552 for regular communications and 1-703-305-7687 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 1-703-308-1113.

MJK

October 11, 2002

*Kathy Matecki*

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